

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**PUBLIC HEARING**  
**SEPTEMBER 8, 2005**

The Lake County Board of Adjustment met Thursday, September 8, 2005 in the Commission Chambers on the second floor of the Round Administration Building in Tavares, Florida to consider requests for variances and any other petitions that may be submitted in accordance with Chapter XIV of the Lake County Land Development Regulations.

**Board Members Present:**

Howard (Bob) Fox, Jr.  
Darren Eslinger  
Henry Wolsmann, Vice Chairman  
Ruth Gray  
Mary Link Bennett  
Donald Schreiner, Chairman

**Board Members Not Present:**

Carl Ludecke

**Staff Present:**

Terrie Diesbourg, Director, Customer Services Division  
Anita Greiner, Senior Planner, Customer Services Division  
Anna Ely, Public Hearing Coordinator, Customer Services Division  
Sherie Ross, Public Hearing Coordinator, Planning and Development Services Division  
Shannon Suffron, Senior Planner, Comprehensive Planning Division  
Amelyn Regis, Senior Planner, Comprehensive Planning Division  
Melanie Marsh, Deputy County Attorney

Chairman Schreiner called the meeting to order at 1:00 p.m. He noted for the record that there was a quorum present. He confirmed that Proof of Publication for each case is on file in the Customer Services Division and that this meeting has been noticed pursuant to the Sunshine Statute.

**TABLE OF CONTENTS**

<b><u>CASE NO.</u></b>	<b><u>OWNER/ APPLICANT</u></b>	<b><u>AGENDA NO.</u></b>
Consideration of Minutes	August 11, 2005	
Withdrawals:		
BOA# 98-05-3	Joseph E. and Cheryl D. Davidson	3
BOA#102-05-5	Kenneth D. and Kandice A. Dembeck	7
Discussion of Consent Agenda		
Consent Agenda Approval:		
BOA# 96-05-5	Ronald M. Kroll	1
BOA# 99-05-2	Theodore H. Geltz, Jr. and Sara H. Geltz/Vici Winn	4
BOA#101-05-5	Irving and Elisabeth L. Reedy	6
BOA#103-05-5	Dean and Becky Murphy	8
BOA# 93-03-3	Michael M. and Sandra H. Graham/John DaRe	9
Regular Agenda:		
BOA# 97-05-3	Sandra Didion	2
BOA#100-05-5	Deanna M. Donohue and Bobby R. Green Steven J. Richey, PA	5
Workshop	Board of Adjustment Procedures and Questions	

**Minutes**

Sherie Ross, Public Hearing Coordinator, asked that the following sentence be added at the end of the first paragraph on Page 14 of the August 11, 2005 Lake County Board of Adjustment public hearing minutes: "She submitted a copy of her presentation as Opposition Exhibit A." Ms. Ross explained that although the copy of the presentation was not shown on the monitor nor given to the members, she felt it would be appropriate to record it as an exhibit rather than just place it in the file.

**MOTION by Mary Link Bennett, SECONDED by Darren Eslinger to approve the August 11, 2005 Board of Adjustment Public Hearing minutes, as amended.**

**FOR:** Fox, Eslinger, Wolsmann, Bennett, Schreiner

**AGAINST:** None

**NOT PRESENT:** Gray, Ludecke

**MOTION CARRIED: 5-0**

Chairman Schreiner stated that if a variance is approved at this public hearing, the owner/applicant should wait at least 24 hours before proceeding to the zoning counter to allow staff time to complete the appropriate paperwork.

He explained the procedure for hearing the cases on the consent agenda.

He noted that all letters, petitions, photographs, and other materials presented at this meeting by applicants and those in support or opposition must be submitted to staff prior to proceeding to the next case. These exhibits will be on file in the Customer Services Division.

Ruth Gray came into the meeting.

**CASE NO.:** BOA#98-05-3 **AGENDA NO.:** 3  
**OWNERS/APPLICANTS:** Joseph E. and Cheryl D. Davidson

**CASE NO.:** BOA#102-05-5 **AGENDA NO.:** 7  
**OWNERS/APPLICANTS:** Kenneth D. and Kandice A. Dembeck

Anita Greiner, Senior Planner, stated that BOA#98-05-3 and BOA#102-05-5 have been withdrawn.

**MOTION by Darren Eslinger, SECONDED by Mary Link Bennett to accept the withdrawals of BOA#98-05-3 and BOA#102-05-5.**

**FOR:** Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner

**AGAINST:** None

**NOT PRESENT:** Ludecke

**MOTION CARRIED:** 6-0

**Discussion of Consent Agenda**

There was no one on the Board nor anyone in the audience who had an objection to the following cases remaining on the consent agenda: BOA#96-05-5, BOA#99-05-2, BOA#101-05-5, BOA#103-05-5, and BOA#93-03-3. Bob Fox asked that BOA#97-05-3 be removed from the consent agenda, and Ruth Gray asked that BOA#100-05-5 be removed from the consent agenda. Both cases will be placed on the regular agenda.

<b>CASE NO.:</b>	<b>BOA#96-05-5</b>	<b>AGENDA NO.:</b>	<b>1</b>
<b>OWNER/APPLICANT:</b>	<b>Ronald M. Kroll</b>		
<b>CASE NO.:</b>	<b>BOA#99-05-2</b>	<b>AGENDA NO.:</b>	<b>4</b>
<b>OWNERS:</b>	<b>Theodore H. Geltz, Jr. and Sara H. Geltz</b>		
<b>APPLICANT:</b>	<b>Vici Winn</b>		
<b>CASE NO.:</b>	<b>BOA#101-05-5</b>	<b>AGENDA NO.:</b>	<b>6</b>
<b>OWNERS/APPLICANTS:</b>	<b>Irving and Elisabeth L. Reedy</b>		
<b>CASE NO.:</b>	<b>BOA#103-05-5</b>	<b>AGENDA NO.:</b>	<b>8</b>
<b>OWNERS/APPLICANTS:</b>	<b>Dean and Becky Murphy</b>		
<b>CASE NO.:</b>	<b>BOA#93-03-3</b>	<b>AGENDA NO.:</b>	<b>9</b>
<b>OWNERS:</b>	<b>Michael M. and Sandra H. Graham</b>		
<b>APPLICANT:</b>	<b>John DaRe</b>		

**MOTION by Bob Fox, SECONDED by Ruth Gray to take the following actions on the above consent agenda:**

<b>BOA#96-05-5</b>	<b>Approval with conditions</b>
<b>BOA#99-05-2</b>	<b>Approval with one condition</b>
<b>BOA#101-05-5</b>	<b>Approval with conditions</b>
<b>BOA#103-05-5</b>	<b>Approval with conditions</b>
<b>BOA#93-03-3</b>	<b>Approval with conditions</b>

**FOR:** Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner

**AGAINST:** None

**NOT PRESENT:** Ludecke

**MOTION CARRIED:** 6-0

CASE NO.:

BOA#97-05-3

AGENDA NO.:

2

OWNER/APPLICANT:

Sandra Didion

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval. She showed the aerial from the staff report on the monitor. In response to Mary Link Bennett, Ms. Greiner said the 20-foot wide paved easement would be extended to reach the newly created parcel. There is litigation currently taking place regarding the width of the railroad. Because the subject parcel is so large and meets the requirements regardless of the size of the easement, this variance request can go forward. Once the litigation has been completed, the County will change the records to reflect the decision from the litigation. This will not affect the variance so it would not be necessary for this case to come back before this Board once the litigation is complete. Bob Fox was informed that the 20-foot wide paved easement would be widened to 50 feet on Ms. Didion's property. When Mr. Fox asked about the 50-foot wide easement south of the 20-foot wide easement, Ms. Greiner said that easement is not under consideration for use by these parcels. Staff would prefer the 20-foot wide paved easement be used to access these parcels. She submitted a map (County Exhibit A) that showed those two easements. She submitted the map from the book (County Exhibit B) and marked on it as to how the 20-foot wide paved easement would reach the seven-acre parcel and where it would be widened. Darren Eslinger was informed by Ms. Greiner that the 50-foot wide extension of the 20-foot easement on Ms. Didion's property does not have to be paved. Ms. Greiner said staff would prefer the 20-foot wide easement be used since it is paved. She did not know if Ms. Didion has the right to use the 50-foot easement. Ms. Didion does have the rights to use the 20-foot easement. In response to Mr. Eslinger, Ms. Greiner said the 20-foot wide easement is about 300 feet. She pointed out the properties that are accessed by that easement. She would not know how long the extension from the 20-foot wide easement would be until a survey is submitted. Without the survey, she also could not verify the dimensions of the two proposed parcels. However, she said one would be 2-1/2 acres and the other parcel would be seven acres. Ms. Greiner added that staff would recommend the Board add a condition that Ms. Didion be required to sign and record a document agreeing to maintain the easement. It will only be utilized by one parcel.

Sandy Didion was present to represent the case. Ms. Didion said the 50-foot wide easement is a deeded easement. She would need her neighbor's permission to pave it. The 20-foot wide easement is paved and deeded, and it runs directly to her property. When Mr. Eslinger asked if she had a preference as far as the access to the two parcels, Ms. Didion said she would like to do it the most inexpensive way. Ms. Greiner confirmed with Mr. Eslinger that he is suggesting Lot 1 be accessed by the 20-foot wide easement and Lot 2 be accessed by the 50-foot wide easement if Ms. Didion has permission to use it. Ms. Didion said the 50-foot wide easement is basically located where she is splitting the lot. Although that easement is not paved, it is a clay easement and is in good shape. Both easements are recorded easements. The 50-foot wide easement actually goes across her parcel. If Ms. Didion can provide documentation that the easement goes into the property, Ms. Greiner said Ms. Didion would not have to add an extension. Ms. Didion said she could provide that documentation. Ruth Gray confirmed that a change in the easements used would not affect the advertising of this variance. Mr. Eslinger added that the staff recommendation did not include any condition about the easements.

M. L. Spikes said he owns the property south of the subject property. He had no objection to the lot split as described.

**MOTION by Darren Eslinger, SECONDED by Mary Link Bennett to approve the variance request in BOA#97-05-3, as written.**

Donald Schreiner said it is not necessary to include a reference to any easements in the motion.

**SEPTEMBER 8, 2005**

**MOTION CARRIED: 6-0**



CASE NO.: BOA#100-05-5

AGENDA NO.: 5

**OWNERS:** Deanna M. Donohue and Bobby R. Green  
**APPLICANT:** Steven J. Richey, PA

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with conditions. She showed the aerial from the staff report on the monitor and submitted a plan of the conceptual lot split as County Exhibit A. She noted the existing 50-foot wide easement that will be continued to provide access and road frontage for the two parcels to the south. She said the pond on the property is an isolated pond so it will not be placed in a conservation easement. There will be 50-foot setbacks from the jurisdictional wetland line.

Ruth Gray questioned the hardship.

Mary Ludwig, paralegal with the law office of Steven J. Richey, noted that Lot 1 has a house on it belonging to the owners of the property. The owners will maintain the 50-foot wide easement. Because of the configuration of the property, there are limitations. However, that is out of their control. She felt the owners do have a hardship due to the lay of the land and the wetlands on the southeast corner of the property. Only two additional parcels are being requested. Using the subdivision process would require paving the easement.

Ms. Gray said she did not feel that there is any hardship or unfairness.

In response to Darren Eslinger, Ms. Ludwig said they have already gone through the zoning process. Originally part of the parcel was zoned R-6 with a future land use of Urban Expansion so they could have developed up to four dwelling units per acre. However, they chose to downzone it to allow the overall site to be zoned AR, allowing one dwelling unit per two acres. She reiterated that this is an oddly shaped parcel with limited width off Willis McCall Road. This makes it difficult to lay out the lot split in any other way. The wetlands on the property also contribute to the hardship. These lots will meet the Code by having at least one acre of uplands for each lot as well as provide the 50-foot setbacks from the wetland line for all structures on the two parcels being created. Meeting the setback requirements for the house, pool enclosure, and the adjoining building also was a factor in configuring these additional lots. She pointed out that County Exhibit A was also an exhibit in the zoning case approved by the Board of County Commissioners (BCC) on July 26, 2005.

Mary Link Bennett was informed by Ms. Ludwig that the two proposed parcels are vacant. Each parcel will have two acres of wetlands and two acres of uplands.

There was no opposition in the audience.

When Mr. Eslinger said he did not want the owners to be able to obtain a variance from the 50-foot jurisdictional wetland buffer, Melanie Marsh, Deputy County Attorney, said this Board could add a condition that the owners must maintain that buffer. To change that condition would require the owners to come back before this Board.

Regarding the 50-foot setback, Ms. Ludwig objected to a condition that no variance be allowed. No one can know what the future may bring. Any deviation from that setback would require the owners to come back before this Board for approval. Even if that was added as a condition, Ms. Greiner said the owners would still be able to come back before this Board and request a variance.

**MOTION by Darren Eslinger, SECONDED by Mary Link Bennett to approve the variance request in BOA#100-05-5 with the following conditions:**

- 1. The parcels being created cannot be split further utilizing any of the administrative lot split applications.**

<b>CASE NO.:</b>	<b>BOA#100-05-5</b>	<b>AGENDA NO.:</b>	<b>5</b>
<b>OWNERS:</b>	<b>Deanna M. Donohue and Bobby R. Green</b>	<b>PAGE NO.:</b>	<b>2</b>
<b>APPLICANT:</b>	<b>Steven J. Richey, PA</b>		

2. The owners must record deed restrictions, which require the property owners and subsequent property owner(s) to maintain the private road or easement. Such restrictions must be recorded prior to the recordation of the approved lot split.

**FOR:** Fox, Eslinger, Wolsmann, Bennett, Schreiner

**AGAINST:** Gray

**NOT PRESENT:** Ludecke

**MOTION CARRIED:** 5-1

**Workshop**

Chairman Schreiner stated that it is important this Board limits its discussion of a case to the request only and not wander in other directions. It is equally important that members research these cases prior to the public hearing.

Melanie Marsh discussed the three requirements of the Sunshine Law. She also spoke of the responsibilities of Board members such as coming prepared and reading the staff reports prior to the public hearing. If a Board member has questions about a factual issue in the staff report, that member can communicate with staff. That would not violate the ex parte rules that govern this body. However, that discussion must be limited to factual issues. The County Attorney's office can be contacted on legal issues.

Ms. Marsh stated that motions should be concise. Conditions can be placed on a variance as long as the conditions are going to help further that variance in meeting the intent of the Code. Motions must be clear enough so that staff can enforce the language of the motion.

Shannon Suffron, Senior Planner, Comprehensive Planning Division, was present to speak on Comprehensive Planning issues. Regarding variances for lot aggregation, Ms. Suffron said it is her understanding that the only body that can make amendments or changes to the Comprehensive Plan is the Board of County Commissioners (BCC). Although the Comprehensive Plan has language that gives a process for dealing with variances for lot aggregation; that conflicts with the fact that the only body that can amend the Comprehensive Plan is the BCC. This Board could postpone cases involving lot aggregation until the Comprehensive Plan is amended as there is a possibility that the existing language in the Comprehensive Plan regarding lot aggregation may no longer exist since it is a conflict with what is allowed to take place with the Comprehensive Plan. Staff is hoping that by the end of 2005 or early 2006, the amended Comprehensive Plan will be completed. Ms. Marsh added that the specific requirements regarding the aggregation of lots are straightforward, factual issues. This Board has the opportunity to determine whether a variance request meets the intent of the Code. With the Comprehensive Plan, the Board does not have that option. The language of the Comprehensive Plan must be strictly followed.

Ms. Marsh explained to the Board that attorneys cannot testify in terms of giving oral evidence to this Board to consider. They can provide legal argument and possibly answer questions.

Donald Schreiner asked if staff could screen the cases for lot aggregation. Anita Greiner said staff does not have the authority to postpone a case. However, in such cases, she would recommend denial as she does not feel this Board has the authority to grant a variance to the Comprehensive Plan. Ms. Marsh stated that there have been two variances that were approved by this Board that did not meet the strict letter of the Comprehensive Plan. She pointed out that the County does have the option to appeal any decision of this Board. Although the goal is to have the Comprehensive Plan completed by December of this year, it must then be transmitted to Department of Community Affairs (DCA), comments received back from DCA, and a final hearing held. It could be six months to a year before it comes into effect. This Board may not want to keep applicants on hold that long especially if there are specific hardships.

If staff recommends denial of a variance because it does not meet the Comprehensive Plan, Ms. Greiner felt it might be better to deny it because if the new Comprehensive Plan gives them something new to go by, then that would allow them to come back before the Board in a year because of a substantial change. If the new Comprehensive Plan allows the applicant to do what they want, then it would not be necessary to come before this Board. Ms. Marsh pointed out that since this Board is a final body, if this Board denies a variance, an applicant cannot come back and make another request of this Board on that same issue for at least a year and there must be changed circumstances. However, that may change with the new Comprehensive Plan.

Mr. Schreiner said he would like a clear mandate from the legal staff when a variance is inappropriate so this Board is not "second guessing." Ms. Marsh reiterated that it is not an intent issue with the Comprehensive Plan--either a variance request meets the language or it does not. Staff does not have the power to refuse to bring an application before this Board because it does not meet the Comprehensive Plan.

**Workshop****Page 2**

However, staff could bring the case to this Board with a recommendation of denial. If an application such as this does come before this Board, Darren Eslinger asked if this Board is required to go through the entire process of hearing the case or can the Board do a de facto denial. Because this is a quasi-judicial board, Ms. Marsh said the applicant has due process rights, which means the applicant has the opportunity to be heard. However, the hearing could be limited to the Comprehensive Plan issue to determine if the variance request should be heard. This Board has the authority to respond that it cannot get past that issue because the request does not meet the criteria, and this Board cannot grant a variance that would be in violation of the Comprehensive Plan. Ms. Greiner spoke of a memo from DCA that she quotes when a variance request does not meet the Comprehensive Plan and stated that the recommendation of denial in the staff report reflects that.

In response to Mary Link Bennett, Ms. Suffron said the Comprehensive Planning staff can coordinate with the Board of Adjustment staff regarding the issues that are directly pertinent to this Board so the Board can be aware of these changes. Ms. Marsh questioned when the Board wanted those changes. Staff could provide a draft of the amended Comprehensive Plan as it is transmitted to DCA so the only new changes coming through would be changes made by DCA. She added that when the Comprehensive Plan is completed, the Land Development Regulations (LDRs) will also be rewritten. Her hope is that when the LDRs are rewritten and approved, the effective date will be far enough in the future so that there will be sufficient time to study it before it goes into effect.

Several Board members suggested ways they could be informed of a new Land Development Regulation when it would affect a particular case. Ms. Greiner said staff would decide on a way to make the Board aware of the changes when cases are brought to them. Mr. Schreiner felt that as long as the staff report reflects a change in a regulation for a particular case, it is the responsibility of each member to read that regulation in the LDRs.

In response to Ruth Gray, Amelyn Regis, Senior Planner, stated that the 50-foot buffer from the jurisdictional wetland line will not be changing in the amended Comprehensive Plan.

Mr. Eslinger was informed by Ms. Marsh that time limits can be set for speakers, but the time limits must be consistent. Ms. Gray stated that there are times when she felt cross examining was necessary in order to establish the credibility of an applicant and the hardship. When Mr. Schreiner asked about the amount of testimony and cross-examination that would be considered legally appropriate, Ms. Marsh replied that this Board needs to take enough testimony that the Board is satisfied as to whether the variance meets the intent of the Code and whether there is a hardship or it meets the principles of fairness. Mr. Schreiner said that last month he had asked that the hardship be made a condition of the approval so that if the hardship expires, the approval also expires. Ms. Marsh explained that a variance can be conditioned to whatever standards this Board feels is necessary to meet the intent of the Code. She reiterated that the motion must be specific enough so that it is something the staff can enforce.

If a variance is based on a hardship of medical health, Ms. Bennett asked if it is unrealistic to assume that an up-to-date medical record would be available. Ms. Marsh said a statement from a doctor would be sufficient. If a case is based on a medical hardship, Mr. Schreiner said he would prefer that staff substantiate that hardship. He did not feel that needs to be shown on the monitor. Ms. Marsh suggested that staff tell the applicant that when the case is heard by the Board, the applicant should be prepared to provide proof of the financial or medical hardship. That would take the burden of collecting the proof off staff. If the Board wants to ensure that a variance is not continued past the time when the hardship requires it, Ms. Marsh said the motion should include language requiring some type of proof such a doctor's note every year confirming that there is still a medical hardship. When a hardship case is on the consent agenda, Ms. Bennett suggested alerting the applicant that he or she should be prepared to provide proof of the hardship such as documentation should the case be removed from the consent agenda.

**Adjournment**

There being no further business, the meeting was adjourned at 2:45 p.m.

Respectfully submitted,

---

Sherie Ross  
Public Hearing Coordinator

---

Donald Schreiner  
Chairman